

Prior Notice/Consent

1. When is a 5 day prior notice required?

Written notice which contains all appropriate content requirements must be given to the parents five days before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. The five-day notice requirement may be waived by the parents.

For example, the district has not received the signed consent for reevaluation. The district may send a written notice letting the parent know that the evaluation process would begin in five-days if the signed notice was not returned or if the parent has not contacted the district. The district would wait five days then begin the reevaluation process.

The five day notice requirement does not apply in situations where “written consent is required”. For example, the district received written consent from the parents to conduct an initial evaluation. The evaluation can be initiated immediately after the district received the written consent.

2. Do I write the names of all teachers who are invited on the prior notice?

It is recommended that the position titles of those invited to the meeting are written on the prior notice.

3. Can certain required member of the IEP team be excused from attending the IEP meeting?

Essential IEP team members may be excused from an IEP team meeting as long as there is agreement and consent between the district and the parent. This would include the regular education teacher, the child’s special education teacher, the representative of the district and the individual who can interpret the instructional implications of the child’s evaluation results. The excused member must submit, in writing to the parent and the IEP team, their input into the development of the IEP prior to the team meeting.

Before excusing an essential IEP team member, be sure it makes sense to do so or if the child would be better served if the meeting were rescheduled to a time when the individuals can be in attendance and participate in the discussion.

4. Is parent consent required prior to the district inviting outside agencies for the purpose of discussing transition services?

To the extent appropriate, and with the consent of the parent or student who has reached the age of majority, the district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. A sample document a district may use to acquire consent can be found in the appendix of the [IEP Technical Assistance Guide](#).

5. Must parents inform the district if they intend to invite their attorney to the meeting?

The regulations are silent regarding this issue. The regulatory guidance authorizes additions to the IEP team, by the parent or the district, to include other individuals who have knowledge or special expertise regarding the child. IEP team meetings are designed to allow the free exchange of information to determine what services are necessary to benefit the child. The presence of an attorney at an IEP meeting may inhibit that free flow of information and may not foster the team concept which is essential to meeting the child's best interests.

6. Does advocacy have a part in the decision making process during an IEP meeting?

Decisions are made by the student's IEP team. While advocacy may be present at the meeting they are not part of the team and therefore cannot make decisions but are there to advise or assist the parent.

7. Does a district need written parental consent to invite Head Start to a preschool special education IEP meeting?

Each school district shall ensure that the IEP team for each student with disabilities includes the following members:

- (6) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student including related services personnel as appropriate;

If the child is participating in the Head Start Program, it may be appropriate for the district or the parent to invite a representative to attend the IEP meeting, especially if they will be assisting in the implementation of the child's program.

***Note:** However, it should be noted that if a public agency wishes to invite officials from another agency, such as officials of the child welfare agency that are not representing the child the public agency must obtain parental consent for the individual to participate in the IEP Team meeting because confidential information about the child from the child's educational records would be shared at the meeting.*

8. Can other individuals attend the IEP meeting who are not listed on the prior notice? (Court service officers)?

The district must list the position titles of all individuals whom they intend to invite to an IEP meeting on the written prior notice.

9. If a topic comes up at a district initiated or parent initiated meeting that was not included on the prior notice, does the district have to send another prior notice?

The prior notice content requirements act as an information guide for parent regarding the district's intended topics for discussion at the meeting. It should act as a meeting agenda for the parent so they can come to the meeting prepared to discuss the educational issues regarding their child. It would be unreasonable to expect that a prior notice would need

to be written for every topic that was generated due to a team's discussion during the meeting.

10. When is prior notice/consent required?

Informed parent consent is required before a district can:

- a. Conduct an initial evaluation to determine whether the child is eligible for special education services.
- b. Provide special education services to a child for the first time.
- c. Conduct a reevaluation.
- d. Allow the parent to excuse an IEP team member
- e. Access private insurance.

11. If the district has sent two meeting notices calls the parents and they indicate they plan to come to the meeting the next day and they do not show up...what should the district do?

There is not an absolute yes or no answer to this question. The district is responsible for ensuring parents are present to participate in the IEP team meetings. The district needs to notify the parents of the meeting early enough to ensure their participation (minimum of 5 days notice) and schedule the meeting at a time and place that is mutually agreed upon. If neither parent can attend, the district may use other methods such as a conference call to ensure their participation. A meeting can be held without the parent if the district cannot convince the parent they should attend or the parent tells the district to hold the meeting without them. In all cases, the district must carefully document all attempts to contact the parents to arrange a meeting and the steps taken to encourage the parent to participate in the meeting. Meetings held following an initial evaluation require the parents' written consent for placement into special education; therefore it would be counter productive to hold the meeting without the parent present.

12. What if the parent does not sign the consent for an initial evaluation?

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation..., or the parent fails to respond to a request to provide consent, the district may, but is not required to, pursue the initial evaluation of the child by using the procedural safeguards in this article, including the mediation procedures, if appropriate, except to the extent inconsistent with state law relating to such parental consent. The school district may have other responsibilities under state law. The school district does not violate its obligation under child find and the requirements in this chapter regarding parental consent, evaluation, and reevaluation if the district declines to pursue the evaluation.

13. If you can't get the parents to sign consent for a three year re-evaluation, what are your options?

A district must make every reasonable effort to obtain written consent to conduct a reevaluation and must document its efforts. If all efforts fail, the district may choose to send another prior notice registered mail, stating if the district does not receive the signed consent within 5 days; the district will begin the reevaluation process.

If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override procedures described in chapter 24:05:30 including mediation and due process hearing procedures.

14. Can a grandparent sign consent? Discuss who can sign consent and when a surrogate must be assigned.

The term, parent, means:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;
- (4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with § 24:05:30:15.

Except as provided below, the biological or adoptive parent...is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons under 1 to 4 above, to act as the parent of a child or to make educational decisions on behalf of a child, then the person or persons are deemed to be the parent.

If the biological or adoptive parent's location is known and their parental rights have not been terminated, then the district must seek consent from the biological or adoptive parent.

15. Do you need consent to complete the Brigance for progress monitoring only?

Prior Notice/consent is required before conducting any individual evaluation. However, when using informal checklists to measure progress towards annual goals, the name of the instrument must be listed on the IEP under "procedure codes". This will inform the parents of the method to be used for measuring student progress. If this is documented in the progress code section, consent would not be necessary.

16. What documentation is required by the district to show that you have made reasonable effort to get parents to a meeting or gain consent?

The state review teams will look for a minimum of two documented attempts. However, it is the districts responsibility to make every effort to gain parent participation. The district must consider their knowledge of the parents and the student before going ahead with a meeting without the parent present.

Documentation to support the districts efforts may include:

- 1) Copies of prior notices
- 2) Copies of notes sent home with the child
- 3) Telephone log with the date of the call and the response

- 4) Certified letter
- 5) Home visit documented in the file
- 6) Informal communication between a parent and the teacher in the community...document the conversation when returning to school.

17. If additional evaluation is necessary prior to an annual review, is consent required?

Prior Notice/consent is required before conducting any individual evaluation.